MCI

MCI Telecommunications
Corporation

FILE COPY ORIGINAL

ORIGINAL

RECEIVED

JUN 23 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 23, 1993

Ms. Donna Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, D.C. 20554

Re: In the Matter of National Exchange Carrier Association, Inc. Revisions to Tariff F.C.C. No. 5 Universal Service Fund and Lifeline Assistance

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
National Exchange Carrier Association, Inc.	)	CC Docket No. 93-123
	)	
Revisions to Tariff F.C.C. No. 5	)	Transmittal Nos. 518, 527, & 530
	)	
Universal Service Fund and LifeLine Assistance Rates	)	

OPPOSITION TO DIRECT CASE

MCI Telecommunications Corporation, Inc.
1133 19th Street N.W.,
Washington, DC 20036

June 23, 1993

RECEIVED

JUN 2 3 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
National Exchange Carrier Association, Inc.	)	CC Docket No. 93-123
	)	
Revisions to Tariff F.C.C. No. 5	)	Transmittal Nos. 518, 527, & 530
	)	
Universal Service Fund and LifeLine Assistance Rates	)	

OPPOSITION TO DIRECT CASE

MCI Telecommunications Corporation, Inc.
1133 19th Street N.W.,
Washington, DC 20036

June 23, 1993

TABLE OF CONTENTS

SUMMARY

MCI Telecommunications Corporation ("MCI") hereby respectfully submits its Opposition to the Direct Case of the National Exchange Carrier Association, Inc. ("NECA") pursuant to the Commission's <u>Investigation Order</u> in CC Docket No. 93-123. MCI demonstrates that the methodology used by NECA to resize the Universal Service Fund ("USF") with respect to errors and omissions ("Es&Os") is unjust and unreasonable, and that such methodology should be changed retroactively.

The reasons given by NECA for not correcting the national average loop costs and related USF payments for all local exchange carriers ("LECs") with respect to Es&Os are frivolous and specious. It may be understandable that Es&Os will occur

RECEIVED

JUN 23 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
National Exchange Carrier Association, Inc.	)	CC Docket No. 93-123
	)	
Revisions to Tariff F.C.C. No. 5	)	Transmittal Nos. 518, 527, & 530
	)	
Universal Service Fund and LifeLine Assistance Rates	)	

> in NECA correcting the national average loop cost so as to change payouts for the relevant year to companies other than the revising company. LECs that do not file revisions are thus insulated from changes in their USF payments.[2]

NECA, through its direct case, requests the Commission to affirm its methodology with respect to Es&Os. Alternatively, NECA requests the Commission to implement changes to its methodology prospectively only.

The reasons given by NECA for not correcting the national average loop costs and related USF payments for all local exchange carriers ("LECs") with respect to Es&Os are frivolous and specious. It may be understandable that Es&Os will occur from time-to-time. However it is reasonable to expect that Es&Os will be corrected once they are detected. It is, however, inexcusable for Es&Os to go uncorrected once detected, especially when LECs financially benefit, unjustly, at the expense of their customers. The Commission should not allow the LECs to profit from their mistakes.

MCI therefore respectfully requests the Commission to require NECA to 1) use the "corrected" national average loop costs to compute USF payments for <u>all</u> LECs, 2) correct the national average loop costs for <u>all</u> Es&Os, and 3) implement such changes retroactively.

---

[2] <u>Id</u>., p 2.

II. NECA's Case

With respect to Es&Os, NECA admits in its direct case that:

1) because Commission Rules restrict the effect of quarterly updates on LECs who do not make such updates, NECA treats Es&Os in a like manner, and thus limits the effects associated with Es&Os to only those LECs reporting such corrections;[3]

2) Commission Rules do not prohibit NECA from making error or omission related adjustments to the national average loop costs used to compute USF payments for all LECs;[4] and

3) it (NECA) does not adjust the national average loop costs used to compute the expense adjustment (i.e., USF payments) for any LEC error or omission of one million dollars or less.[5]

NECA then argues that Es&Os should be treated the same as quarterly updates for policy considerations. The policy considerations are:

1) the desired stability of USF payouts by LECs because such payouts should be deducted in the determination of state revenue requirements;[6] and

2) the inconsistency in treatment that would result between

NECA also notes that there are fundamental differences between the operation of the USF and the common line and traffic sensitive pools which justify different treatment for Es&Os.[8] With regard to such differences, NECA observes that the common line and traffic sensitive pools are voluntary and that their earnings are at risk, whereas participation in the USF is mandatory and based upon historical costs.[9]

NECA then argues that any change to its methodology should be implemented prospectively because of the possibility that LECs would not have the opportunity to recover their costs and because of administrative cost concerns.[10]

III. MCI's Position on NECA's Treatment of Es&Os

MCI objects to NECA's treatment of LEC Es&Os regarding LECs who have not adjusted their USF data, and detests the fact that some LECs profit from the mistakes of other LECs. Simply put, it is MCI's position that:

1) the national average loop costs used to compute USF payments of all LECs should be corrected for all Es&Os;

2) quarterly updates are not the same as Es&Os, and therefore should be accorded different treatment; and

3) NECA's million dollar threshold for making corrections to USF payments for Es&Os is far too high.

---

[8] Id., p 13.

[9] Id., pp 13 - 14.

[10] Id., p 19.

Since NECA does not "correct" the national average loop [redacted] had made corrections to the national average loop costs used to calculate all LEC USF payments, USF payments would have varied overall by only .55 percent ($15.1M / $2,724.3M) for all years combined. The greatest variance in USF payments would have occurred in 1987, and it was only -3.2 percent (-$8.3M / $256.5M). The impact upon the USF payments of individual LECs whose national average loop costs was not adjusted for Es&Os would have been comparable to that experienced by the LEC industry as a whole.

B. Es&Os are Different and Should be Treated Differently

Es&Os should be treated differently from quarterly updates because they are different. Quarterly updates directly affect the USF payments that individual LECs actually receive between semi-annual USF rate filings. Under current rules and practices, such updates affect the individual LEC USF payments in the current period. However, the USF rate impact upon ICs is deferred, and most importantly, <u>trued-up</u> in a subsequent semi-annual USF rate filing. This process is fair to ICs. This, however, is not the case for Es&Os.

Since NECA does not adjust the national average loop costs used to compute non-adjusting LECs' USF payments for Es&Os, the IC industry is <u>not</u> made whole with respect to the USF payments that LECs would have received had the errors or omissions not occurred, or been corrected. Allowing Es&Os to go uncorrected is patently unfair, unjust and unreasonable.

NECA's very own calculations show that had it reflected the corrections associated with Es&Os in the national average loop costs used to compute all LECs' USF payments, the USF payments would have been $13.3 million less for all years, and $18.1 million less for the previous three years.[11] Moreover, it appears that NECA's re-calculations only take Es&Os in excess of one million dollars into consideration. Consequently, if all reported Es&Os were taken into consideration, the USF overcharges would have been greater.

V. Changes to NECA's Methodology Should be Implemented Retroactively

The LECs should be held accountable for a methodology which has allowed them to financially benefit at the expense of the ICs. Moreover, the reasons given by NECA for implementing a change to its methodology prospectively are meritless. The Commission must be mindful that NECA could have obtained direction from the Commission on this matter long ago instead of resolving this matter is a manner which has proved to be financially beneficial to its constituency. It is rather disingenuous for NECA to propose that any methodology changes be made prospectively for the reasons stated, especially when the LECs have the ICs' money in their pockets.[12]

NECA proposes prospective implementation of any change to its methodology pertaining to Es&Os because LECs 1) would be denied an opportunity to recover their costs and 2) would incur some administrative costs in order to restate their separations studies.[13]

The administrative costs associated with LEC revisions to separations studies cannot be material because the USF expense adjustment only represents one dollar amount on one line in

[12]The vast majority of the LECs will be affected immaterially, if at all, by a Commission decision to retroactively implement the necessary changes to NECA's USF procedures. BellSouth, GTE and Contel would be affected the most because they receive a hugh proportion of the USF.

[13]NECA Direct Case, p 19.

any given separations study. In addition, MCI seriously doubts that such revisions are necessary to begin with. Indeed, NECA has not identified any rule requiring such revisions. Also, the materiality of any prior period USF payment change would certainly play a significant role in determining whether or not any revision to a separations study would be necessary. NECA's calculations in Appendix 3 show that the error and omission related USF payment changes for the vast majority of the LECs would be nil, and the impact on a great many of the LECs would undoubtedly be immaterial.

The notion that LECs would not have the opportunity to recover their costs is spurious at best. In order for LECs to be put into a posture of possibly not having an opportunity to recover their costs, LECs would have had to have undergone state rate cases in which their state revenue requirements would have been based upon abnormally high USF amounts; thus, On the other hand, even if LECs did have state rate cases, the rate of return that they are allowed to earn (in both the state and interstate jurisdictions) includes a cushion for "business risks" such as revisions to USF payments. Moreover, LECs are not guaranteed a specific rate of return as implied by NECA's cost recovery argument.

recover its costs at any time in the past because of a USF payment revision.

VI. Conclusion

MCI has demonstrated that the methodology used by NECA to resize the USF revenue requirement for Es&Os is unjust and unreasonable.

MCI therefore respectfully requests the Commission to require NECA to use the corrected national average loop costs to compute USF payments for all LECs, correct the national average loop costs for all Es&Os, and implement such changes retroactively.

Respectfully Submitted,

MCI TELECOMMUNICATIONS CORPORATION

Randy R Klaus (CarR)

Randy R. Klaus
Sr. Staff Member
701 Brazos St., Suite 600
Austin, Texas 78701
(512) 495-6723

Dated: June 23, 1993

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on June 23, 1993.

Randy R Klaus (a.r.k.)

Randy R. Klaus
Senior Staff Member
701 Brazos St., Suite 600
Austin, Texas 78701
(512) 495-6723

CERTIFICATE OF SERVICE

I, Carolyn McTaw, do hereby certify that copies of the foregoing MCI petition were sent via first class mail, postage paid, to the following on this 23rd day of June, 1993:

Kathleen B. Levitz**
Chief, Common Carrier Bureau
FCC
Room 500
1919 M Street, NW
Washington, DC 20554

Gregory J. Vogt**
Chief, Tariff Division
FCC
Room 518
1919 M Street, NW
Washington, DC 20554

Dan Grosh**
FCC
Room 518
1919 M Street, NW
Washington, DC 20554

Ann Stevens**
FCC
Room 518
1919 M Street, NW
Washington, DC 20554

Robert Lloyd
NECA
2300 N Street, NW
Suite 600
Washington, DC 20037

Judy Nitsche**
FCC
Room 518
1919 M Street, NW
Washington, DC 20554

Policy and Program Planning Division**
FCC, Room 544
1919 M Street, NW
Washington, DC 20554

International Transcription Svc**
Room 246
1919 M Street, NW
Washington, DC 20554

Kathryn Falk
NECA
2300 N. Street, N.W.
Washington, DC 20001

Antonio Yanez
NECA
100 South Jefferson Road
Whippany, NJ 07981

Kent Nillson**
FCC
Room 544
1919 M Street, NW
Washingotn, DC 20554

Joanne Salvatore Bochis
NECA
100 South Jefferson Road
Whippany, New Jersey 07981

Carolyn C. Hill
ALLTEL Service Corporation
1710 Rhode Island Avenue, N.W.
Washington, D.C. 20036

David Cosson
National Telephone Cooperative Association
Its Attorney
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

Michael D. Lowe
Lawrence W. Katz
Bell Atlantic Telephone Company
1710 H Street, N.W.
Washington, DC 20006

Paul Rogers
Charles D. Gray
James Bradford
NECA
1102 ICC Building
P. O. Box 684
Washington, DC 20044

**** Hand Delilvered**

Carolyn McTaw

Carolyn McTaw